



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royalwood RV & Golf Resort
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant and three agents for the landlord.

Neither party raised any issues related to the service of evidence and both were prepared to proceed with the hearing.

I note that because this is an Application for Dispute Resolution submitted by the tenants seeking to cancel a notice to end tenancy issued by the landlord, Section 48 of the *Manufactured Home Park Tenancy Act (Act)* requires I issue an order of possession to the landlord if the landlord's notice complies Section 45 of the *Act* and I either dismiss the tenant's application or uphold the landlord's notice to end tenancy.

At the outset of the hearing, I raised the issue of whether or not the Residential Tenancy Branch had jurisdiction to hear these matters. Both parties agreed the *Act* applies to this tenancy and as a result, I have accepted jurisdiction.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a One Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 60, and 65 of the *Act*.

Should the tenant fail to succeed in cancelling the One Month Notice to End Tenancy for Cause it must be determined if the landlord is entitled to an order of possession, pursuant to Sections 45 and 48 of the *Act*.

Background and Evidence

The parties agree the tenancy began on April 24, 2021 on a month to month basis for a monthly rent of \$625.00 due on the 24th of each month.

The tenant submitted into evidence a copy of a One Month Notice to End Tenancy for Cause issued by the landlord on January 3, 2022 with an effective vacancy date of February 2, 2022 citing that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and/or seriously jeopardized the health or safety or lawful right of another occupant or the landlord and the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.

In the Details of Events section, the landlord wrote:

- 1) Refused to wear mask when paying rent on Nov. 24/21
 - a. Was told to wear a mask next time.
- 2) Comes in Dec. 24/21 with her children all without masks protesting that they don't wear mask.
 - a. We refused rent until someone came with a mask.
 - b. Was able to get a hold of Debbie on the phone and had an hr.long conversation discussing her views on Covid and how she felt about staying here with our mask mandate rule. No resolution. Jan 2/21 gave verbal one-month notice of eviction.

On her Application for Dispute Resolution the tenant stipulated that she received the Notice to End Tenancy on January 3, 2022, after it had been posted to her door.

The landlord submitted that on September 24, 2021 the tenant came to the office to pay rent and that she refused to wear a mask which lead to a disturbance for which the police attended. The landlord submitted that the same thing occurred on October 24, 2021. I note, the wearing of masks at the time of these events had been ordered by the Provincial Health Officer. The landlord submitted the tenant continued to attend the office and attempt to pay rent without wearing a mask for both her November and December 2021 rent payments.

The landlord submitted that in addition, they have since had complaints about the tenant refusing to wear a mask in the laundry room and that she was seen exiting the washrooms with a lit cigarette. These issues were not identified on the Notice to End Tenancy.

The tenant agrees that police were called to the incident of September 24, 2021 but that nothing resulted from that visit. She stated also that police were not called to the October 24, 2021 incident.

The tenant submitted that she had been paying her rent since April 2021 without wearing a mask at any time and that after a political discussion she had with the landlord they started insisting that the tenant wear a mask when she paid the rent. The landlord did not dispute the tenant's testimony that she had not been required to wear a mask prior to September 24, 2021.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other reasons, one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

As noted in the hearing, I have only considered events as outlined in the Details of Events section of the One Month Notice to End Tenancy as contributing to why the landlord issued this notice. That is to say, that while the landlord has identified complaints from other occupants of the Park there were not identified as reasons why the landlord was seeking to end the tenancy.

First, in regard to the detail provided that the landlord had an hour-long conversation on the phone with the tenant and that they came to "no resolution" during the conversation, I find that a landlord cannot end a tenancy based on a discussion that had no resolution.

In regard to the two other incidents identified where the landlord indicated police were called, while I accept that these incidents may have been uncomfortable, I am not satisfied from the landlord's submissions that they were significant or unreasonable.

Furthermore, as the landlord did not dispute that the tenant had not been required to wear a mask for the period between April and September, despite mask mandates being order by the Provincial Health Officer, I find the landlord is estopped from enforcing that requirement in these circumstances.

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others. In these circumstances, the failure to enforce a mask rule is inconsistent with the landlord's position taken to end the tenancy as a result of the tenant's refusal to wear one.

Conclusion

Based on the above, I order that the One Month Notice to End Tenancy issued by the landlord on January 3, 2022 is cancelled and of no force or effect. I order that the tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in her Application for Dispute Resolution, I order that she is entitled to recover the filing fee of \$100.00 from the landlord. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 65(2) of the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: April 12, 2022

Residential Tenancy Branch